

*United States Court of Appeals  
for the Second Circuit*



**SUPPLEMENTAL  
APPENDIX**



75-2107

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

ELIZABETH POWELL, DELREE MAPP, KATHERINE  
PURRINGTON, ALTHEA McDANIELS, PAULA  
HERBERT, CYNDI REED, and MARGARET GATLING,  
on behalf of themselves and all other  
similarly situated,

Plaintiffs-Appellees,

-against-

BENJAMIN WARD, Commissioner of Correctional  
Services and JANICE WARNE, individually,  
and as Superintendent of Bedford Hills  
Correctional Facility,

Defendants-Appellants.

[ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE SOUTHERN  
DISTRICT OF NEW YORK]

B  
P/S

JOINT SUPPLEMENTAL APPENDIX

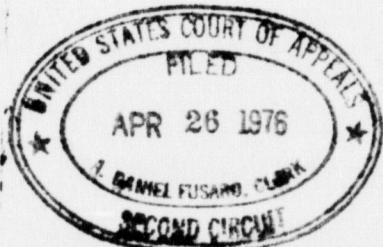
LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York

Attorney for Defendants-  
Appellants

Office & P.O. Address  
Two World Trade Center  
New York, New York 10047  
Tel. No. (212) 488-7590

DONAL GRAJALES  
STEPHEN M. LATIMER  
Bronx Legal Services,  
Corp. C  
Attorney for Plaintiffs-  
Appellees

570 Courtlandt Avenue  
Bronx, New York 10451  
Tel. No. (212) 993-6250



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH POWELL, et al., :  
Plaintiffs, : NOTICE OF MOTION  
-against- : 74 Civ. 4628  
(C.E.S.)  
BENJAMIN WARD, et al., :  
Defendants. :  
X

S I R :

PLEASE TAKE NOTICE, that upon all the papers and proceedings heretofore had herein, the undersigned will move this Court before Judge Stewart at Room 2602, United States Courthouse, Foley Square, City of New York, on the 5th day of February, 1976, for permission to move for reargument out of time, pursuant to General Rule 9(n) of this Court and for an order vacating and modifying the judgment of this Court, entered June 24, 1975, as explained in the accompanying memorandum of law, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
January 20, 1976

Yours, etc.,

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
Attorney for Defendants  
Office & P.O. Address  
Two World Trade Center  
New York, New York 10047  
By

MARGERY EVANS REIFLER  
Assistant Attorney General  
Tel. (212) 488-7590

TO: STEPHEN M. LATIMER, ESQ.  
Bronx Legal Services, Corp. C  
579 Cortlandt Ave.  
Bronx, New York 10451

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH POWELL, ET. AL.,

Plaintiffs,

74 CIV. 4628 (C.E.S.)

-against-

BENJAMIN WARD, ET. AL.,

Defendants.

STEPHEN M. LATIMER, being duly sworn, says:

I am the attorney for Plaintiffs. I make this affidavit in opposition to Defendants' motion to modify Paragraph 1(f) and 2 of the Court's Order of June 23, 1975.

After rendering its decision on Plaintiffs' motion for a preliminary injunction, this Court entered its order directing that, among other things:

- f) Neither the Deputy Superintendent for Security, nor any person whose job involves direct responsibility for institutional security, shall be a member of any Adjustment Committee or Superintendents' Proceeding at which an inmate is charged with an act which proportionately threatens the security of the prison.
2. If any inmate is confined to Special Housing or segregation "pending investigation" of charges, a hearing must be held within seven days of the date of her confinement.

Since the date of the Order, Superintendents Proceedings have been held involving offenses from possession of an unauthorized social security care to aileged attacks on a correction officer. The proceedings have been conducted by persons other than those directly concerned with institutional security, including the educational supervisor and the Deputy Superintendent for Administration. Copies of several charge sheets, and dispositions as available are annexed as Exhibits "A" through "L". It does not appear that this Court's injunction progibiting the Deputy Superintendent for Security or "any person whose job involves direct responsibility for institutional security" from conducting disciplinary proceedings involving breaches of security has in any way hindered the administration of discipline within Bedford Hills. Accordingly, there is no factual reason to modify paragraph 1(f), of the order Analysis of Exhibits "A" through "L", which on information and belief, are representative of disciplinary proceedings at Bedford Hills, sho that in each case the Superintendents Proceeding was scheduled for a date seven days after the alleged infraction regardless of the severity of the charge or simplicity of the fact pattern. In each case the inmate was placed in segregation pending the hearing. It thus appears that the normal practice at Bedford Hills is to hold an inmate in segregation for seven days before the Superintendents Proceeding, even when investigations may be completed in a shorter time.

For instance, on August 27, 1975, LINDA STRAYHORN was accused of cursing at a correction officer and taking food from Davis Hall. (Exhibit "C"). The hearing was not held until September 3, 1975, eight days after. ELIZABETH HOLCOMB was charged on November 4, 1975, with possession of certain items of contraband. (Exhibit "E"). The Superintendents Proceeding was not held until November 10, 1975. In both cases, the facts were sufficiently uncomplicated that a hearing could have been held within seventy-two hours of the time the charge sheets were prepared. The effect of the practice is to subvert the protective intent of Paragraph 2, and keep inmates in confinement with none is necessary. Even in the most complex fact pattern known to me since June, 1975, an incident involving at least four inmates and alleged attacks on two correction officers. (Exhibits I, J, K and L), hearings were scheduled and heard seven days after the incident.

The dangers of the prison's present practices are illustrated by these cases: MARILYN WATKINS, (Exhibit "B"), ELIZABETH HOLCOMB, (Exhibit "D"), and PAULA HERBERT, (Exhibit "F"). On October 28, 1975, Ms. Holcomb was charged with arguing and cursing. The Superintendents Proceeding was held on November 3, 1975, and she was not ordered to segregation until November 3, 1975. On November 5, 1975, Paula Herbert was charged with possession of "booze." Her Superintendents Proceeding was held on November 12, 1975 and she was sentenced to time served in segregation, and loss of seven

days good time. (Exhibit "F", Page 3). Had hearings been held within seventy-two hours of the offense, appropriate lesser penalties might have been imposed.

Marilyn Watkins was charged with having drugs in her urine on return from furlough. She spent seven days in segregation before the laboratory report of the urine specimen was found to be in error. Although her parole officer recommended that she be placed on work release, she was still irreparably harmed by the unwarranted confinement in segregation.

Patently, the prison is able to administer discipline, even in a possible emergency, and adhere to this Court's "seven day" limit, even in extreme circumstances. Accordingly, to protect the inmates' right against excessive pre-hearing segregation, I request that the Order of June 23, 1975, be modified as suggested in the accompanying Memorandum.



STEPHEN M. LATIMER

Sworn to before me this 10<sup>th</sup>  
day of February, 1976.



VINCENT GAGLIARDI  
NOTARY PUBLIC

VINCENT GAGLIARDI  
Notary Public, State of New York  
No. 03-4513583  
Qualified in Bronx County  
Commission Expires March 30, 1977

State of New York - Department of Correctional Services

Bedford Hills Correctional Facility  
(Facility)

**SUPERINTENDENT'S PROCEEDING**  
**FORMAL CHARGE**

To: Lorraine Foy No. BP-5930 Cell \_\_\_\_\_

You are hereby notified that the Superintendent has directed that a formal charge be filed against you to be considered and determined at a Superintendent's proceeding to be held on June 27, 1975 before \_\_\_\_\_ (date)

MJ Guenther, Acting Captain (name and title) for the following misbehavior:

You are hereby advised that no statement made by you in response to the charge or information derived therefrom may be used against you in a criminal action or proceeding.

At approximately 8:10 A.M. Lorraine Foy arrived on the 3rd Floor in the school, apparently following Deborah Hiller. At this time I heard and noticed Lorraine challenging Deborah to fight. Lorraine was told to leave the school, instead Lorraine followed Deborah inside the classroom still challenging Deborah to fight. Again Lorraine was requested to leave the school building, as she was out of bounds. Lorraine told me to "go ahead and write the charge sheet." Lt. Steinbaugh was notified of this incident and before arriving, Lorraine then challenged Carolyn Mitchell to fight. Neither one of these residents would fight with Lorraine. Lorraine was again requested to leave the school and at 8:25 A.M. Lorraine departed from the school building.

N. Lee, C.O.  
6/20/75

Lorraine set a fire in room #44 in West Wing.

M. Robinson, C.O.  
6/20/75

You are further notified that A. McAllister, Correction Counselor (name and title) has been designated to furnish assistance to you in this matter.

J. M. Salomon  
Signature of Person Preparing Charge

Title

Date

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INMATE

EXHIBIT A

Bedford Hills Correctional Facility  
(Facility)

**SUPERINTENDENT'S PROCEEDING  
FORMAL CHARGE**

To: Lorraine Foy No. BP-5930 Cell \_\_\_\_\_

You are hereby notified that the Superintendent has directed that a formal charge be filed against you to be considered and determined at a Superintendent's proceeding to be held on June 27, 1975 before (date) Acting Captain, M. J. Gueuther (name and title) for the following misbehavior:

At approximately 2:45 P.M. there was a call for help from C. Smithers that there was a fire down on Sick Wing Corridor. C.O. Taylor called to report a fire. Lorraine Foy's mattress was molterning and smoke was coming from her room. Lorraine had her mattress up against her door and she was huddlin g in the corner of the room.

M. P. Jones, C.O.  
6/20/75

Lorraine Foy grabbed medicine bottles (2) this morning while I was giving it out and swallowed some pills.

M. J. Bradt, Sgt.  
6/24/75

Chapters 5 and 6, Procedures for Implementing Standards of Inmate Behavior and for Granting Good Behavior Time Allowances are available for your review upon request.

You are further notified that A. McAllister, Correction Counselor  
(name and title)

has been designated to furnish assistance to you in this matter.

M. Salomon  
Signature of Person Preparing Charge

David P. Lipt 6/26/75  
Title Date

State of New York - Department of Correctional Services

Bedford Hills Correctional Facility  
(Facility)

**SUPERINTENDENT'S PROCEEDING  
FORMAL CHARGE**

To: Marilyn Watkins No. BP-5794 Cell \_\_\_\_\_

You are hereby notified that the Superintendent has directed that a formal charge be filed against you to be considered and determined at a Superintendent's proceeding to be held on \_\_\_\_\_ before \_\_\_\_\_ (date) for the following misbehavior:  
(name and title)

You are hereby advised that ~~nosstatement~~ made by you in response to the charge or information derived therefrom may be used against you in a criminal action or proceeding.

Marilyn returned from furlough on June 22, 1975. A urine specimen was taken and results indicated Pentobarbital a "Short action tranquilizer per Upjohn Toxicology Dept."

E. Winters, C.O.  
6/30/75

Chapters 5 and 6, Procedures for Implementing Standards of Inmate Behavior and for Granting Good Behavior Time Allowances are available for your review upon request.

You are further notified that Mr. Olshevsky, Parole Officer \_\_\_\_\_  
(name and title)  
has been designated to furnish assistance to you in this matter.

*Jr. Olshevsky*

Signature of Person Preparing Charge

*ljt*

Title

*7/13/75*

Date

INMATE

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STATE OF NEW YORK  
DEPARTMENT OF CORRECTIONAL SERVICES  
MEMORANDUM

TO: Mrs. Janice Harns, Correctional Superintendent  
FROM: Ron Olechovsky, Parole Officer  
SUBJECT: Marilyn Watkins - Superintendent's Proceeding  
DATE: 7/28/75

Marilyn Watkins was served with formal Superintendent's Proceeding charge stating the following: "Marilyn returned from a furlough on 6/22/75. A urine specimen was taken and results indicated penta-barbital, a "short-acting tranquilizer per Upjohn Toxicology Department." J.E. Winters, C.O. 6/30/75.

In reviewing this charge with Marilyn, she states she is not guilty to the charge, that she went on the furlough 6/18 and that while here at Bedford, she was on medication, donitol which contains phena-barbital.

At Marilyn's request, we contacted the lab technician at Bedford Hills, Careen Vigliano and she contacted the lab technician, Pam Hale at the Upjohn Laboratory. On 7/29/75 at 2 p.m., we received verification from Miss Hale at Upjohn Laboratory that the printout card was a mistake and that it should have read phena-barbital present and not penta-barbital. In view of the fact that Marilyn was on donitol at the time of her furlough of 6/18 and phena-barb is present in this donitol, it is the phena-barbital that showed up in the urine specimen and not penta-barbital. This charge is, therefore, in view of this finding, not accurate and should be disposed of.

We are requesting because of the medical error that the charge be totally struck from Marilyn's record and, in addition, she be granted furlough and Work Release privileges as she had prior to this infraction, alleged infraction. Marilyn had been approved for Work Release and was awaiting transfer notice and we, therefore, would like to have her re-enstated with no penalties to her.

A statement from Upjohn Laboratories will be forwarded to the institution either today or tomorrow for document of the above statements.

In view of the fact that Marilyn was housed in segregation for 7 days and had gone through unordinary emotional duress and stress due to a laboratory error, we are requesting that she be given the opportunity to be transferred to the Parkside Correctional Facility in the Work Release Program immediately.

## State of New York - Department of Correction

Bedford Hills Correctional Facility  
(Facility)SUPERINTENDENT'S PROCEEDING  
RECORD SHEET

1) Name of Inmate Linda Strayhorn NO. 74G-152 CELL   
Date of Inmate's

2) Date Charge Made 8/27/75 First Interview 8/28/75

3) Inmate  Admits Charge  Denies charge  Admits acceptable variation of charge

(Specify) Admits acceptable variation of charge--  
Admits to cursing at Correction Officer and denies taking any food from Davis Hall.

Signature of Inmate

No.

## 4) Witnesses Interviewed

Name	Title	Name	Title
Name	Title	Name	Title

5) Reports Considered

—

6) Second Interview, Inmate  Admits charge  Denies charge  Admits acceptable variation of charge

7) Charge  Affirmed  Dismissed  Varied and affirmed as follows  
Admits acceptable variation of charge- Admits to cursing at Correction Officer and denies taking any food from Davis Hall.

8) Action by Adjustment Committee to date on this matter (Enter confinement and loss of privileges) Referred to Superintendents Proceeding

—

9) Disposition Ordered Entered Special Housing on 8/28/75 and can leave Special Housing on 9/11/75 (9/

—

Signature	Title	Date
-----------	-------	------

9/9/75

10

## State of New York - Department of Correction

Bedford Hills Correctional Facility  
(Facility)SUPERINTENDENT'S PROCEEDING  
REPORT TO COMMISSIONER  
(For Automatic Review Dispositions)

1) Name of Inmate Strayhorn, Linda No. 74G-152

2) Date of Disposition of Charge 09/03/75

3) Disposition Ordered Confined to Special Housing from 8/28/75 to 9/11/75.  
(Two Weeks)

4) Time Already Spent in Confinement or Other Disciplinary Action Taken In  
This Matter Prior to This Disposition (specify)  
Entered Special Housing on 8/28/75.

5) Summary of Evidence Denies taking any food from Davis Hall, but admits to cursing  
at Correction Officer - Admits acceptable variation of charge.

6) Inmate's Explanation I may have said some profane language, but I did not take  
anything from the kitchen and not all that she said I said. I said "I'm damn  
sick and tired of her shit, but taking from the kitchen---- The only thing I  
had was some plates tops and my room is full of them because the officers let  
us take them and so she told me I couldn't take nothing. When she looked in  
my bag---ya know if I had some food I wouldn't have opened my bag for her to  
search me and when she looked in my bag and seen the plate tops she said I  
couldn't take nothing from the kitchen. And she took me out and told me to put  
it back. I put it back and I came out the kitchen. When I came out of the  
kitchen she was on the phone talking to Ms. Wilson and I found that out later  
but at the time I didn't know who she was talking to. And ~~she~~ she told them  
I was taking out a piece of hot meat in my bag. Now if I was taking hot meat  
why didn't she take it from me. She told me to put the plate tops back and I  
did that. And then she got on the phone and told a lie on me. And so I got (cont.)

## NOTICE TO INMATE

The foregoing report has been sent to the Commissioner of Correction today  
concerning the disposition ordered in the Superintendent's Proceeding on the  
charge against you dated 8/28/75.

You are hereby notified that the Commissioner of Correction will review  
this disposition and that you may communicate in writing to the Commissioner  
in connection with this matter.

mad. That made me up set. But as far as me threatening her I did not threaten that women and I have witnesses that I did not threaten her. I'm not no fool. Because I worked to hard to get down into Davis Hall and up on the honor floor. And I know this women--- me and her do not get along. She don't like me and I don't like her. But I would never threaten the women.

No, No, it's not contraband cause other officers let us take them. My room is full of them, I decorate my room with them and all the other girls down in Davis Hall have them decorating there cells with them. It's not contraband! Now if it was contraband the regular officers that work down there would not have let us take them.

Yes, I cursed her but I did not threaten to strike her. And I did not take any food out of there in my bag. Mr. Boss I've been down there nine months and I've worked with other relief officers and that's not the first time she worked down there. Me and this lady--- its been a thing going on ever since those pies had been made down there and something had happened up on 114. Where the girls went , and they reported her cause she was trying to get people to go to bed. She was telling them to go to bed and up there on the Honor Floor we don't have to go to bed untill we get ready. And if you leave the recreation room to go down to your cell to get something the lady will lock us. So some girls went down to the Main Building and reported her. And ever since then I've been catching a fit from this lady. I've really been catching hell from her.

But I had been staying up while she was on the floor and a couple of times she had locked me before I was ready to be locked. So with other people sleeping, we have consideration of them, we don't holler out for her to open our doors and especially if we live at the end of the corridor where I live at. One night I was up ther and I had a real bad migraine headache, so I got in bed and two (2) girls asked her to come down here and see about me,-- So she could get me some medication. She never came yet! She locked me instead of coming to see about me. The girls came back to my cell door and they had thought that I had asked to be locked. And I told them she had never came down to see about me. And the next morning my head was till hurting and I couldn't go to work. And then the pies were made down in Davis Hall and she went to the Main Building and said that I used to much butter for the pies and that I was not suppose to be cooking pies for the girls down there. They told us at our interview that we could cook anything we wanted down there, And eat anything we wanted down there as long as we ate it down there. And she went down to the Main Building and she told somebody that we were taking the pies out and it wasn't even time for us to go home. So I don't know how she could say we were taking the pies out. And so there were nine(9) pies there. Right--- I made pies for the morning girl and for the afternoon girls so that we would have enough pies.

And then she went and had Lt. O'Hearn to call and she told the officer that she was to sell the pie over the counter. We don't cook pies down there to sell over the counter, they have them come in from a company. Ms. Saunders came back she wanted to know why they were putting out the potato pies. To sell over the counter. Well we know that we don't sell no pies that the girls make over the counter and then she said that Miss Clement gave the order to. When we went to Miss Clement she didn't know nothing about it. And sowhen I asked her one day why do you harass us the way you do and she said "yous girls, you don't eat that much butter and yous girls know that ya'll don;t do this and ya'll don't do that.

And then when we asked her to go to Ms. Saunders about it she wouldn't go to Ms. Saunders about it. She won't say nothing to the regular officer about it. But she steadily harasses the girls. And then she told us about--- the lady is prejudice and she told us that we need to be working like they were working years ago here when they had a farm. Getting up in the morning and going out and milking the cows and feeding the chickens.

So I'll have to do two (2) weeks in seg, loose my housing where I live?

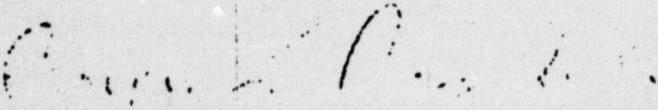
For doing two (2) weeks here--- I have lost it already so what are ya'll trying to do to me? You have punished me three (3) times, then I am going to loose my job. I don't know why I am even coming here, because I ain't gonna get no just-ice.

I done listened. You done gave me two (2) weeks so what else are you gonna do?

You ain't gave me nothing.

I am damn sick and tired of this shit. That is all I said. That is all I said.

Oh why don't you stop---That's to much. I know you have heard worse things then that in this correctional facility and other places also so don't tell me that's to much.

  
Signature

  
Title

  
Date

## State of New York - Department of Correction

Bedford Hills Correctional Facility  
(Facility)SUPERINTENDENT'S PROCEEDING  
RECORD SHEET1) Name of Inmate Elisabeth Holcomb NO. 75G-1 CELL 113B2) Date Charge Made 10/27/75 Date of Inmate's First Interview 10/28/753) Inmate  Admits Charge  Denies Charge  Admits acceptable variation of charge(Specify) Inmate admits Guilty to Argument but not cursing*156-1*

Signature of Inmate

No.

4) Witnesses Interviewed

Name \_\_\_\_\_ Title \_\_\_\_\_ Name \_\_\_\_\_ Title \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_ Name \_\_\_\_\_ Title \_\_\_\_\_

5) Reports Considered See Attached Statement6) Second Interview, Inmate  Admits charge  Denies Charge  Admits acceptable variation of charge7) Charge  Affirmed  Dismissed  Varied and affirmed as follows \_\_\_\_\_8) Action by Adjustment Committee to date on this matter (Enter confinement and loss of privileges) Held for Supt's Proceedings9) Disposition Ordered To be locked in S.H.U. till November 3, 1975*Wm. M. Nichols*  
Signature

Sr. Main. Supv.

12.9.75

14

Title

Date

EXHIBIT D

## State of New York - Department of Correction

## Bedford Hills Correctional Facility

(Facility)

SUPERINTENDENT'S PROCEEDING  
REPORT TO COMMISSIONER  
(For Automatic Review Dispositions)

1) Name of Inmate **Elizabeth Belcomb** No. **758-1**

2) Date of Disposition of Charge **November 3, 1973**

3) Disposition Ordered **October 27, 1973**

4) Time Already Spent in Confinement or Other Disciplinary Action Taken In This Matter Prior to This Disposition (specify) **Locked in S.H.U.**  
**October 27th to November 3, 1973**

5) Summary of Evidence  
**See Attached statements**

6) Inmate's Explanation **Guilty to arguing, I didn't curse Diana, I tried to say that's not necessary. No as far as I'm concerned it is squashed. I think it had a lot to do with my tension of going to board. You know the anxiety and everything that goes along with it. And she had a charge coming in and you know and sometimes things like that happen. No as a matter of fact we are friends, everybody gets in arguments once in a while. If it got loud it was something we tried to settle ourselves. No I didn't hear but that's how come. No as a matter of fact me and Diana has spoken since we have been here. Thank you I appreciate that.**

Signature

Sr. Main Supv.

12.9.73

Title

Date

## NOTICE TO INMATE

The foregoing report has been sent to the Commissioner of Correction today concerning the disposition ordered in **October 27, 1973** Superintendent's Proceeding on the charge against you dated **\_\_\_\_\_**.

You are hereby notified that the Commissioner of Correction will review this disposition and that you may communicate in writing to the Commissioner in connection with this matter.

State of New York — Department of Correctional Services

Bedford Hills Correctional Facility

(Facility)

**SUPERINTENDENT'S PROCEEDING  
FORMAL CHARGE**

To: Elizabeth Holcomb

No. 75G-1 Cell #20

You are hereby notified that the Superintendent has directed that a formal charge be filed against you to be considered and determined at a Superintendent's proceeding to be held on November 10, 1975 before Robert Fleming (date)

Officer Robert Fleming the following misbehavior:  
(name and title)

**YOU ARE HEREBY ADVISED THAT NO STATEMENT BY YOU IN RESPONSE TO THE ACTION OR INFORMATION DERIVED THEREFROM MAYBE USED AGAINST YOU IN A CRIMINAL ACTION OR PROCEEDING.**

1. Violation of 1.30, 1.32, 3.10.3 of Standards of Inmate Behavior.
- 1.30 Contraband, 1.32 Dangerous Weapon, 3.10.3 , I cards Social Security, etc.

Patricia Murphy, C. O.  
11/4/75

THE INMATE SHALL BE PERMITTED TO CALL WITNESS ON HER BEHALF PROVIDED THAT SO DOING DOES NOT JEOPARDIZE INSTITUTIONAL SAFETY OR CORRECTIONAL GOALS.

CHAPTERS 5 AND 6, PROCEDURES FOR IMPLEMENTING STANDARDS OF INMATE BEHAVIOR AND FOR GRANTING GOOD BEHAVIOR TIME ALLOWANCES ARE AVAILABLE FOR YOUR REVIEW UPON REQUEST.

You are further notified that

Ms. Perez

C.O.

(name and title)

has been designated to furnish assistance to you in this matter.

*C. Perez*

*PT*

*11/15*

Signature of Person Preparing Charge

Title

Date

EXHIBIT E

## STATE OF NEW YORK-DEPARTMENT OF CORRECTIONAL SERVICES

Bedford Hills Correctional Facility

(Facility)

SUPERINTENDENT'S PROCEEDING  
RECORD SHEET1) Name of Inmate Klinchach Bulach No. 750-1 Cell 1202) Date Charge Made 11/4/75 Date of Inmate's  
First Interview 11/3/753) Inmate  Admits Charge  Denies Charge  Admits acceptable variation of charge  
(specify) Inmate admits to having Contraband but claims she didn't know it  
was Contraband

Signature of Inmate

No.

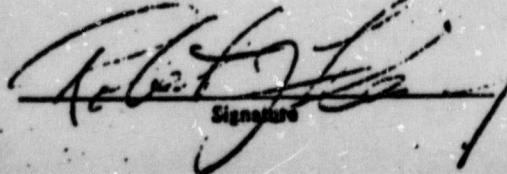
## 4) Witnesses Interviewed

Name Title Name TitleName Title Name Title

## 5) Reports Considered

See attached Statements6) Second Interview, Inmate  Admits Charge  Denies Charge  Admits acceptable variation of charge7) Charge  Affirmed  Dismissed  Varied and affirmed as follows

8) Action by adjustment committee to date on this matter (enter cumulative confinement and loss of privileges)

Held for Supt's ProceedingBy order of Supt. Disposition amended on December 9, 1975 To be released onDecember 9, 19759) Disposition Ordered 60 Days in S.H.U.

Signature

ROBERT STEWART

Title

12.9.75

Date

17

G74 E 12

## State of New York - Department of Correction

Bedford Hills Correctional Facility  
(Facility)SUPERINTENDENT'S PROCEEDING  
REPORT TO COMMISSIONER  
(For Automatic Review Dispositions)

1) Name of Inmate Elizabeth Holcomb No. 750-1

2) Date of Disposition of Charge November 10, 1973

3) Disposition Ordered REVERSED November 5, 1973

4) Time Already Spent in Confinement or Other Disciplinary Action Taken In This Matter Prior to This Disposition (specify) November 4, 1973 60 days

5) Summary of Evidence See Attached Reports

6) Inmate's Explanation The Contraband I don't know that your talking about do you mean possession of it. The wire yeah I had that myself, I took it out of Electrics. I didn't know your wasn't allowed to have it. Dangerous weapons and S. S. Cards were given to me when I came in to this Institution. They were handed to me in a brown envelope when I came out of quarantine I don't know if Mr. Scarborough had went through them or not. I never looked I just threw them in the drawer. I took the gun out of the envelope and found it was broken. Cause it is a bay eakin and I was trying to put it back together, cause I didn't know it was Concrebend. Cause it doesn't work it is not something that will shoot. Well I didn't know anything about S.S. Cards being in my envelope. Now the gun I didn't think it was contraband cause it don't work. So I just took it I had letters and a whole lot of other things and I just dumped them into my drawer I thought if she went through it she took all the contraband that was the

Signature

Title

Date

## NOTICE TO INMATE

The foregoing report has been sent to the Commissioner of Correction today concerning the disposition ordered in the Superintendent's Proceeding on the charge against you dated November 4, 1973.

You are hereby notified that the Commissioner of Correction will review this disposition and that you may communicate in writing to the Commissioner in connection with this matter. REVERSED November 5, 1973  
By order of Supt. MM Disposition amended and to be released on December 9, 1975 from S.H.U.

Elizabeth Holcomb

purpose of it. No I didn't know. For attempting to escape. I'm attempting to escape under my own I.D.. Well what I'm trying to say is they have seen me with this on the floor. No one have ever come to me and says you have something that is contraband. I don't see if it don't work how it could harm anybody. If someone pointed it at me a small thing like that I would probably laugh at them. I have just never seen one that small that would shoot. Well I don't know anything about needles. This is mine that's right. The reason why I didn't go through them is she had them and she should have gone through them. There should have been no contraband in there. I never carried it. It was in my room. I have a brooch with a stone on it I keep it in a box and I had it in the same box. Because it was broken and I was going to try and put the thing back together so I could put my boys on it. But I never carry it. When I saw I couldn't fix it I just put it in the box with the broken pieces. This isn't the one. I never looked it out I never carried it cause it was broken and I just left it in the box. Mrs. Murphy can tell you when she found it. Because my brooch was taken out of the box and thrown into my room. From Rockland County. You because it was a heavy chain. I didn't realize it was contraband or it was dangerous. No I didn't. I figured she had taken everything. I just threw it into the drawer. My room is junkie. It just gets you junkie. I don't go through things. Yeah.

R. J. H.  
Signature

Date Received  
Title

10-9-75  
Date

To: Miss Clement - Superintendent  
From: C.O.P. Murphy  
Re: Elizabeth Holcomb #7561 - 114A-Room 20

11-4-75

On 11-4-75, at approximately 10:30 A.M., Sgt. Coffey and I, C.O.P. Murphy, were packing Elizabeth Holcomb's belongings to be moved to 114A. We opened a small box containing a couple items of jewelry, one of which had a stone in it. Concealed in the bottom of the box under a layer of cotton was a miniature revolver (2 to 3 inches) in 3 parts. It appeared to be operable and able to fire a miniature projectile. We also found a wallet containing an I.D. card, Social Security card, Blue Cross card and other personal papers and cards. Also found was a combination lock.

Patricia J. Murphy C.O.  
S. Coffey, Sgt.

BHCF

LL75/75

A. Scarborough, CC  
Lt. Stevens, Adjustment Committee  
Elizabeth Holcomb 75G1

At your request, I am submitting this statement in regard to a w  
and small revolver (in pieces) which was found in Elizabeth's ro  
during a recent raid.

At the time of Elizabeth's admission, the counselors were require  
go through new inmate's belongings and OK what they could have.  
cannot remember giving these items to Elizabeth because anythin  
the walled would have been given to mail clerk to hold and anythin  
like a revolver which you described, would be held. However, beca  
we were so busy, this might have slipped through, but I cannot cond  
that this happened.

A. Scarborough

State of New York — Department of Correctional Services

Bedford Hills Correctional Facility

(Facility)

**SUPERINTENDENT'S PROCEEDING  
FORMAL CHARGE**

To: Paula Herbert

No. 74G-146

Cell

You are hereby notified that the Superintendent has directed that a formal charge be filed against you to be considered and determined at a Superintendent's proceeding to be held on November 12, 1975 before George Sipos, Education Supv. (name and title) for the following misbehavior:

**YOU ARE HEREBY ADVISED THAT NO STATEMENT BY YOU IN RESPONSE TO THE CHARGE OR INFORMATION DERIVED THEREFROM MAYBE USED AGAINST YOU IN A CRIMINAL ACTION OR PROCEEDING.**

1. Found Booze behind Turner Cottage. Two women hid a jar of liquid contents in the back of Turner Cottage during school time. Making it impossible to disturb.

A. E. Mann, C.O.  
11/5/75

THE INMATE SHALL BE PERMITTED TO CALL WITNESSES ON HER BEHALF PROVIDED THAT SO DOING DOES NOT JEOPARDIZE INSTITUTIONAL SAFETY OR CORRECTIONAL GOALS.

CHAPTERS 5 AND 6, PROCEDURES FOR IMPLEMENTING STANDARDS OF INMATE BEHAVIOR AND FOR GRANTING GOOD BEHAVIOR TIME ALLOWANCES ARE AVAILABLE FOR YOUR REVIEW UPON REQUEST.

You are further notified that

Mr. Morris

Guidance ~~XXXXXX~~ Counselor

(name and title)

has been designated to furnish assistance to you in this matter.

Signature of Person Preparing Charge

Date

EXHIBIT P

State of New York - Department of Correction

*Richard Hells*  
(Facility)

SUPERINTENDENT'S PROCEEDING  
REPORT TO COMMISSIONER  
(For Automatic Review Dispositions)

1) Name of Inmate Paula Herbert No. 74/9146

2) Date of Disposition of Charge 11-12-75

3) Disposition Ordered Loss of 7 days good time; time served  
in ISHU

4) Time Already Spent in Confinement or Other Disciplinary Action Taken In  
This Matter Prior to This Disposition (specify)

5) Summary of Evidence  
Statement of officer

6) Inmate's Explanation  
I was with friend on the afternoon of

*Blasio*  
Signature

*Ed. Sugar*  
Title

11-12-75  
Date

NOTICE TO INMATE

The foregoing report has been sent to the Commissioner of Correction today concerning the disposition ordered in the Superintendent's Proceeding on the charge against you dated \_\_\_\_\_.

You are hereby notified that the Commissioner of Correction will review this disposition and that you may communicate in writing to the Commissioner in connection with this matter.

## State of New York - Department of Correction

Bedford Hills Facility  
(Facility)SUPERINTENDENT'S PROCEEDING  
RECORD SHEET

1) Name of Inmate Paula Herbert NO. 74G-246 CELL             
 2) Date Charge Made November 6, 1973 Date of Inmate's             
 First Interview November 6, 1973

3) Inmate  Admits Charge  Denies Charge  Admits acceptable variation of charge  
 (Specify) Inmate pleads Not Guilty

Rosa J. Kelly  
 Signature of Inmate

No.

## 4) Witnesses Interviewed

Name	Title	Name	Title
------	-------	------	-------

Name	Title	Name	Title
------	-------	------	-------

5) Reports Considered See Attached Statements

6) Second Interview, Inmate  Admits charge  Denies Charge  Admits acceptable variation of charge

7) Charge  Affirmed  Dismissed  Varied and affirmed as follows

8) Action by Adjustment Committee to date on this matter (Enter confinement and loss of privileges) Hold for Supt. Proceeding

9) Disposition Ordered Loss of 7 Days Good Time, Released from S.H.U. on time served

Signature	Title	Date
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EXH F 13

Bedford Hills Correctional Facility

(Facility)

**SUPERINTENDENT'S PROCEEDING  
FORMAL CHARGE**

Roseanna Vega

74G-93

#2

To: \_\_\_\_\_ No. \_\_\_\_\_ Cell \_\_\_\_\_

You are hereby notified that the Superintendent has directed that a formal charge be filed against you to be considered and determined at a Superintendent's proceeding to be held on November 18, 1975 before William Rikisher, Main. (Sr.) Supv. (name and title) for the following misbehavior:

YOU ARE HEREBY ADVISED THAT NO STATEMENT BY YOU IN RESPONSE TO THE CHARGE OR INFORMATION DERIVED THEREFROM MAYBE USED AGAINST YOU IN A CRIMINAL ACTION OR PROCEEDING.

1. Between 6:45 and 8:00 A. M. Violations 1.25, 2.30 and 3.30.2 of the Standards of Inmate Behavior.

P. Murphy, C.O.  
11/11/75

THE INMATE SHALL BE PERMITTED TO CALL WITNESSES ON HER BEHALF PROVIDED THAT SO DOING DOES NOT JEOPARDIZE INSTITUTIONAL SAFETY OR CORRECTIONAL GOALS.

CHAPTERS 5 AND 6. PROCEDURES FOR IMPLEMENTING STANDARDS OF INMATE BEHAVIOR AND FOR GRANTING GOOD BEHAVIOR TIME ALLOWANCES ARE AVAILABLE FOR YOUR REVIEW UPON REQUEST.

You are further notified that Ms. Perez C.O.  
(name and title)

has been designated to furnish assistance to you in this matter.

*11/11/75*  
Signature of Person Preparing Charge

*11/11/75*  
Title

*11/11/75*  
Date

25

State of New York — Department of Correctional Services

## Bedford Hills Correctional Facility

(Facility)

SUPERINTENDENT'S PROCEEDING  
FORMAL CHARGETo: Paulette RichardsonNo. 75G-118 Cell

You are hereby notified that the Superintendent has directed that a formal charge be filed against you to be considered and determined at a Superintendent's proceeding to be held on November 26, 1975 Nov. 26, 1975 before Education Supv. Education Supv. (name and title) for the following misbehavior:

**YOU ARE HEREBY ADVISED THAT NO STATEMENT BY YOU IN RESPONSE TO THE CHARGE OR INFORMATION DERIVED THEREFROM MAYBE USED AGAINST YOU IN A CRIMINAL ACTION OR PROCEEDING.**

1. Paulette Richardson attacked me, pulled my wig off also hit me in the head with an object (I don't know what it was). She informed that this was because of a charge sheet I had written when she was in Quarantine. Threw my wig in the bushes. When we reached the top of the Hill, she struck me again in the head.

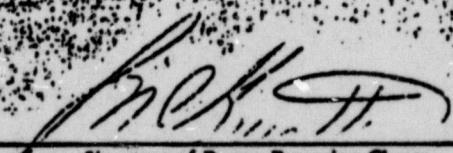
P. McNeil, C.C.  
11/18/75

THE INMATE SHALL BE PERMITTED TO CALL WITNESS ON HER BEHALF PROVIDED THAT SO DOING DOES NOT JEOPARDIZE THE INSTITUTIONAL SAFETY OR CORRECTIONAL GOALS.

CHAPTERS 5 AND 6, PROCEDURES FOR IMPLEMENTING STANDARDS OF INMATE BEHAVIOR AND FOR GRANTING GOOD BEHAVIOR TIME ALLOWANCES ARE AVAILABLE FOR YOUR REVIEW UPON REQUEST.

You are further notified that Joseph Altier Parole Officer  
(name and title)

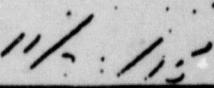
has been designated to furnish assistance to you in this matter.



Signature of Person Preparing Charge



Title



Date

EXHIBIT H

State of New York — Department of Correctional Services

Bedford Hills Correctional Facility  
(Facility)**SUPERINTENDENT'S PROCEEDING  
FORMAL CHARGE**To: Linda TaylorNo. 74G-156Cell 113C-21

You are hereby notified that the Superintendent has directed that a formal charge be filed against you to be considered and determined at a Superintendent's proceeding to be held on November 24, 1975 (date) before Arleana Wagner, Deputy Supt. (name and title) for the following misbehavior:

**YOU ARE HEREBY ADVISED THAT NO STATEMENT BY YOU IN RESPONSE TO THE CHARGE OR INFORMATION DERIVED THEREFROM MAYBE USED AGAINST YOU IN A CRIMINAL ACTION OR PROCEEDING.**

1. Threatening an Officer, attacking an Officer, Sgt. causing a riot. When C. O. Petrak was off bubble attempting to assist C.OO Leath she was attacked by Linda Taylor and Shelia Liles, Teresa Rogers and LaVerne Scott who pulled her hair and punched her about the face and neck and scratched her. Linda Taylor and Shelia Liles grabbed mop wringers and threatened to throw them at the first white face that came through the door. They knocked off Sgt. Bradt's glasses and knocked Ms. Petrak's keys from her hands before they attacked her.

E. Petrak, C.O.  
11/18/75

2. Drawing the drapes while Shelia Liles was in her room. Threatening an officer, causing a disturbance and threatening to break windows. Linda Taylor had Shelia Liles in her room with the drapes drawn, when I told them they were violating.

E. Petrak  
11/17/75

You are further notified that J. C. Maynira (name and title) has been designated to furnish assistance to you in this matter.

Parole Officer

(name and title)

State of New York — Department of Correctional Services

Bedford Hills Correctional Facility

(Facility)

**SUPERINTENDENT'S PROCEEDING  
FORMAL CHARGE**

To: Linda Taylor

No. 74G-156 Cell 113C-21

You are hereby notified that the Superintendent has directed that a formal charge be filed against you to be considered and determined at a Superintendent's proceeding to be held on November 24, 1975 before Arlean Wagner, Deputy Supt. (name and title) (date) for the following misbehavior:

Page #2

Linda screamed for C.O. Petrak to stop harassing her, to beat it and leave them alone, put it in her book, etc. These women have been counselled regarding corridor rules before and have violated before.

When C.O. Petrak went back to the bubble, C.O. Wilkins was talking to Linda and Shelia Liles, who was shouting and causing a disturbance. Linda Taylor said "She was going to put her foot up C. O. Petrak Ass." She wanted to move off the floor and if the administration didn't (there was to much noise at that moment to hear what the administration was suppose to do) Linda and Shelia threatened to break all the windows in the place.

These two women have been a problem the past few days making trouble and noise and disregarding the rules.

C.O. Petrak  
N.R. Wilkins, C.O.  
11/17/75

THE INMATE SHALL BE PERMITTED TO CALL WITNESSES ON HER BEHALF PROVIDED THAT SO DOING DOES NOT JEOPARDIZE INSTITUTIONAL SAFETY OR CORRECTIONAL GOALS.

CHAPTERS 5 AND 6. PROCEDURES FOR IMPLEMENTING STANDARDS OF INMATE BEHAVIOR AND FOR GRANTING GOOD BEHAVIOR TIME ALLOWANCES ARE AVAILABLE FOR YOUR REVIEW UPON REQUEST.

You are further notified that J. G. Dzyndra

Parole Officer

(name and title)

has been designated to furnish assistance to you in this matter.

Signature of Person Preparing Charge

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State of New York — Department of Correctional Services

Bedford Hills Correctional Facility

(Facility)

**SUPERINTENDENT'S PROCEEDING  
FORMAL CHARGE**

To: Theresa Rogers No. 74G-194 Cell 113 C 14

You are hereby notified that the Superintendent has directed that a formal charge be filed against you to be considered and determined at a Superintendent's proceeding to be held on November 24, 1975 before Robert Fleming, Inst. Steward Supv. (date) for the following misbehavior:

(name and title)

YOU ARE HEREBY ADVISED THAT NO STATEMENT BY YOU IN RESPONSE TO THE CHARGE OR INFORMATION DERIVED THEREFROM MAYBE USED AGAINST YOU IN A CRIMINAL ACTION OR PROCEEDING.

1. Disobeying orders, refusing to lock in. She was asked to lock in; we were having trouble and Shelia Liles and Linda Taylor had mop wringers and were shouting threats at C.O. Petrak and "The first white face to walk through the door" was promised a mop wringer. We asked the women to lock in because of trouble. She refused.

E. Petrak C.O.  
11/18/75

2. When C. O. Petrak was off the bubble attempting to assist C.O. Leah taking the mop wringer from Shelia Liles, Linda Taylor and Theresa Rogers attacked C.O. Petrak, pulling her hair and punching her on the face and neck and scratching her. When Ms. Wilkins attempted to defend C.O. Petrak she too was attacked.

E. Petrak, C.O.  
11/18/75

THE INMATE SHALL BE PERMITTED TO CALL WITNESSES ON HER BEHALF PROVIDED THAT SO DOING DOES NOT JEOPARDIZE INSTITUTIONAL SAFETY OR CORRECTIONAL GOALS.

CHAPTERS 5 AND 6, PROCEDURES FOR IMPLEMENTING STANDARDS OF INMATE BEHAVIOR AND FOR GRANTING GOOD BEHAVIOR TIME ALLOWANCES ARE AVAILABLE FOR YOUR REVIEW UPON REQUEST.

You are further notified that Ms. McAllister Guidance Counsellor  
(name and title)

has been designated to furnish assistance to you in this matter.

Signature of Person Preparing Charge

Title

Date

EXHIBIT J

State of New York — Department of Correctional Services

Bedford Hills Correctional Facility

(Facility)

**SUPERINTENDENT'S PROCEEDING  
FORMAL CHARGE**

To: Leverne Scott

No. 75G-135

Cell 113D

You are hereby notified that the Superintendent has directed that a formal charge be filed against you to be considered and determined at a Superintendent's proceeding to be held on November 24, 1975 (date) for the following misbehavior:

Arleane Wagner, Deputy Supt. (name and title)

**YOU ARE HEREBY ADVISED THAT NO STATEMENT BY YOU IN RESPONSE TO THE CHARGE OR INFORMATION DERIVED THEREFROM MAYBE USED AGAINST YOU IN A CRIMINAL ACTION OR PROCEEDING.**

1. Attacking an officer: When C.O. Petrak was off the bubble attempting to assist C.O. Leath taking the mop wringer from Shelia Liles, Leverne Scott, Shelia Liles, Linda Taylor and Theresa Rogers attacked C.O. Petrak, pulling her hair and punch her on the face and neck and scratching her.  
E. Petrak C.O.  
11/18/75
2. Disobeying direct order, refusing to lock in. She was asked to lock in; we were having trouble and Shelia Liles and Linda Taylor had mop wringers and were shouting threats to C.O. Petrak "The first white face to walk through the door" was promised a mop wringer. We asked the women to lock in because of the trouble. She refused.  
E. Petrak, C.O.  
11/18/75

Leverne Scott came to the Adjustment clinic and refused to be locked. Leverne Stated "If you want me in you will have to put me in". Leverne refused to go in at 5:00 P.M. walked in with Sgt. Levine.

C.O. Doyle

You are further notified that Sgt. Levine (name and title) has been designated to furnish assistance to you in this matter.

State of New York — Department of Correctional Services

Bedford Hills Correctional Facility  
(Facility)

**SUPERINTENDENT'S PROCEEDING  
FORMAL CHARGE**

To: Levarne Scott

No. 75G-135 113D  
Cell \_\_\_\_\_

You are hereby notified that the Superintendent has directed that a formal charge be filed against you to be considered and determined at a Superintendent's proceeding to be held on November 24, 1975 before Arleene Wagner, Deputy Supt. (name and title) for the following misbehavior:

Page # 2

THE INMATE SHALL BE PERMITTED TO CALL WITNESSES ON HER BEHALF PROVIDED THAT SO DOING DOES NOT JEOPARDIZE INSTITUTIONAL SAFETY OR CORRECTIONAL GOALS.

CHAPTERS 5 AND 6, PROCEDURES FOR IMPLEMENTING STANDARDS OF INMATE BEHAVIOR AND FOR GRANTING GOOD BEHAVIOR TIME ALLOWANCES ARE AVAILABLE FOR YOUR REVIEW UPON REQUEST.

Sgt. Levina

You are further notified that Sgt. Levina (name and title) has been designated to furnish assistance to you in this matter.

Signature of Person Preparing Charge

Title

Date

Bedford Hills Correctional

(Facility)

**SUPERINTENDENT'S PROCEEDING  
FORMAL CHARGE**

To: Shelia Liles

No. 74G-156 Cell 113C

You are hereby notified that the Superintendent has directed that a formal charge be filed against you to be considered and determined at a Superintendent's proceeding to be held on November 24, 1975 before Robert Fleming (date) for the following misbehavior: (name and title) Inst. Steward, Supv.

**YOU ARE HEREBY ADVISED THAT NO STATEMENT BY YOU IN RESPONSE TO THE CHARGE OR INFORMATION DERIVED THEREFROM MAYBE USED AGAINST YOU IN A CRIMINAL ACTION OR PROSECUTION.**

1. Threatening an officer, attacking two officers, a Sgt. and a Lt. creating a disturbance, causing a riot, destroying State property. Shelia and Linda Taylor came up the corridor shouting that Mrs. Petrak better not come to Shelia's room or Shelia would "Come out Fighting". They grabbed two mop wringers and threatened to throw them at the first white face that came through the door. When Lt. Hinkley appeared Shelia Liles threw the mop wringer at Lt. Hinkley through the glass. They knocked Sgt. Bradt's glasses off, knocked C.O. Petrak's keys out of her hand and beat her on the head and face, pulled her hair and scratched her. When C.O. Wilkins tried to defend C.O. Petrak they attacked her.

Z. Petrak, C.O.  
11/18/75

2. Threatened me and made the statement "She would like to get me". She struck and smashed the windows right in front of me with a mop wringer as I was approaching the corridor on the landing at the entrance of the floor.

A. Hinkley, Lt.  
11/18/75

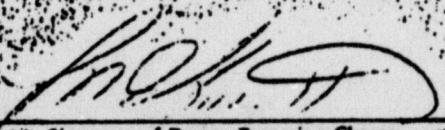
Mrs. Morris

Guidance Counselor

You are further notified that

(name and title)

has been designated to furnish assistance to you in this matter.

  
Signature of Person Preparing Charge

Title

Date

**EXHIBIT L**

State of New York — Department of Correctional Services

Bedford Hills Correctional Facility

(Facility)

**SUPERINTENDENT'S PROCEEDING  
FORMAL CHARGE**

Shelia Liles

74G-156

113-C

To: \_\_\_\_\_

No. \_\_\_\_\_

Cell \_\_\_\_\_

You are hereby notified that the Superintendent has directed that a formal charge be filed against you to be considered and determined at a Superintendent's proceeding to be held on NOVEMBER 24, 1975 before Robert Fleming, Inst. Stewart Supv. for the following misbehavior:

(name and title)

Page #2

3. Shelia Liles was in Linda Taylor's room, when I told them this was a violating of corridor rules, Linda screamed to beat it, quit harrassing her. When I was on the bubble, later, C. O. Wilkins was talking to Linda and Shelia, who were shouting and causing a disturbance. Linda Taylor and Shelia Liles threatened to break all the windows in the place.

They continued making noise and shouting, then they turned their attention to Yonne Lee and shouted that she was responsible for making statements to the Administration about the corridor.

These two women have been a problem the last few days, making trouble and noises and disregarding corridor rules.

E. Petrak, C.O.  
11/17/75

THE INMATE SHALL BE PERMITTED TO CALL WITNESSES ON HER BEHALF PROVIDED THAT SO DOING DOES NOT JEOPARDIZE INSTITUTIONAL SAFETY OR CORRECTIONAL GOALS.

CHAPTERS 5 AND 6, PROCEDURES FOR IMPLEMENTING STANDARDS OF INMATE BEHAVIOR AND FOR GRANTING GOOD BEHAVIOR TIME ALLOWANCES ARE AVAILABLE FOR YOUR REVIEW UPON REQUEST.

Mrs. Morris

Guidance Counselor

You are further notified that \_\_\_\_\_

(name and title)

has been designated to furnish assistance to you in this matter.

Signature of Person Preparing Charge

Title

Date

EXH L. 92

File

488-7590

March 23, 1976

Re: Powell v. Ward  
74 Civ. 4628

Hon. Charles E. Stewart  
United States District Court  
United States Courthouse  
Foley Square  
New York, New York 10007

Dear Judge Stewart:

Pursuant to our agreement at oral argument on March 16, I am writing regarding some of the open issues in Powell v. Ward.

Defendants agree that it would be useful and proper to expand the term "emergency situations" used in the modified order suggested by them (Main Memorandum at 7). Because it is impossible to anticipate every situation which might necessitate the delay of a prison disciplinary hearing, they suggest that illustrative examples of such circumstances be given, rather than finalized definitions. Also, defendants believe that their examples might better be described as "unusual or emergency situations." Accordingly, they suggest that paragraph 2 of your Honor's order be modified to read:

Ordinarily, if an inmate is confined to Special Housing or segregation "pending investigation" of charges, a hearing must be held within seven days of confinement. In unusual or emergency situations, the seven day requirement may be extended but only with the permission of the Commissioner of Correctional Services or his designee. Examples of such situations include a disturbance involving a substantial

Hon. Charles E. Stewart  
Re: Powell v. Ward  
74 Civ. 4628

March 23, 1976

-2-

number of inmates or violence or the illness or other forced incapacity of the charged inmate or a necessary witness.

Plaintiffs have suggested that they are routinely placed in special confinement pending their hearings. I would like to point out to your Honor that the Department's own regulations provide that inmates be specially confined or continued in special confinement only in certain limited situations. Under the heading "Initial Actions in Cases of Inmate Misbehavior" (7 NYCRR Part 251), the rules provide that an officer may confine an inmate to his cell or room if there are reasonable grounds to believe that he "represents an immediate threat to the safety, security or order of the facility or an immediate danger to other persons or to property." § 251.6(a). Only when such the inmate's behavior appears to be disruptive or inconsistent with the best interests of the facility or the inmate may the inmate be placed in a special housing unit. §§ 251.6(d), (e).

The Adjustment Committee must meet a specially confined inmate at its first meeting following the date of confinement. § 252.3(f). If the Committee does not make a disposition at the first meeting, it is to determine whether continued confinement is necessary. § 252.3(f). If the Committee disposes of the case by determining that the misbehavior is serious enough to refer to a Superintendent's Proceeding (§ 252.4[b][2]), the inmate may be placed (or continued) in special confinement only when "the inmate's behavior is such that his presence in a general housing unit disrupts the order of that unit or is inconsistent with the best interests of the facility or of the inmate" and an immediate recommendation for the Superintendent's Proceeding must be made. § 252.5(e)(3). Accordingly, it is clear that the Department's own rules do not tolerate routine special confinement but rather delineate carefully when such confinement is permissible.

With regard to the possibility of creating a three person Superintendent's Proceeding, your Honor adheres to his original ruling that the Deputy Superintendent is barred from

Hon. Charles E. Stewart  
Re: Powell v. Ward  
74 Civ. 4628

March 23, 1976

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conducting a single person hearing when an inmate is charged with a security breach, the Department prefers to continue having single person hearings with a non-security individual presiding rather than enlarging the panel.

As your Honor requested, I am enclosing a complete copy of the March 12, 1975 Donnino Memorandum, a portion of which was annexed to defendants' main memorandum as Exhibit "A". As I mentioned previously, certain portions of the memorandum are no longer operative because of recent judicial decisions and amended departmental regulations.

Respectfully yours,

LOUIS J. LEFKOWITZ  
Attorney General  
By

*MER*

MARGERY EVANS REIFLER  
Assistant Attorney General

MER:gls  
Encl.

cc: Stephen M. Latimer, Esq.

36



Rec'd  
3/31  
BRONX LEGAL SERVICES CORPORATION C.

NICHOLAS FIGUEROA, ESQ.  
*Chairman*

LORENZO CASANOVA,  
*Vice Chairman*

FREDERIC B. POTACK,  
*Secretary*

THOMAS FARRELL,  
*Treasurer*

HUNTS POINT OFFICE  
579 COURTLANDT AVENUE— 2ND FLOOR  
BRONX, N.Y. 10451  
(212) 993-6250

DONALD GRAJALES  
Project Director

MICHAEL C. FAHEY  
Managing Attorney

March 30, 1976

BOARD OF DIRECTORS      Hon. Charles E. Stewart  
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WILLIAM LOGAN  
MYRON McCLARY  
HANSEL McGEE  
ROBERT J. McGuIRE  
CLEO PEARSON  
HARVEY SPIZZ  
AUSTIN TORRES

Re:      Powell v. Ward  
                    74 Civ. 4628

Dear Judge Stewart:

I have this date received a copy of the Attorney General's letter to you dated March 23, 1976. It appears that "single person hearings with a non-security individual presiding" are acceptable to the Department in practice, if not in theory. Accordingly, and for the reasons stated at Point I of Plaintiffs' Memorandum on remand, Paragraph 1(f) of the Court's order should not be modified.

Plaintiffs suggest that Paragraph 2 be modified to incorporate provisions of the order proposed by Plaintiffs in their Memorandum at p. 2, and suggested by the Attorney General in her letter of March 23, 1976:

(a) "Ordinarily a Superintendents Proceeding should be held within 72 hours of the time an inmate is placed in segregation. In unusual or emergency situations the 72-hour period may be extended to seven days. If extension beyond seven days is required, approval of the Commissioner of Correctional SErvices shall be obtained upon written request from the Superintendent of the Facility stating in detail the facts and circumstances why the hearing cannot be conducted within that time.

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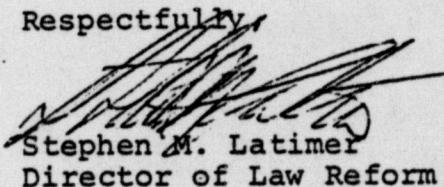
(b) Unusual or emergency situations are those involving: 1) a disturbance involving a substantial number of inmates, 2) illness or forced incapacity of the charged inmate, 3) a natural catastrophe, e.g., extreme flooding, or 4) a clear and present danger to human life.

A seventy-hour limitation has been imposed in New Jersey. See Avant v. Clifford, 67 N.J. 496 at 528, 341 A2d 629 (1975).

While the Department's regulations define those situations where pre-hearing confinement is permissible, those regulations are not at issue. The facts surrounding most disciplinary charges, even where pre-hearing confinement is warranted, are simple enough so that they can be investigated and heard within seventy-two hours. However, at Bedford Hills, the practice when an inmate is segregated is to routinely schedule the hearing for the seventh or eighth day, regardless of the complexity of the issue. Thus, instead of protecting the inmate as Paragraph 2 of your order was designed to do, the prison is using that order to confine persons for seven days, even where such lengthy pre-hearing confinement is unnecessary, or as shown in my affidavit of February 10, 1976, is actually injurious to the inmate.

The written request by the Superintendent for an extension of pre-hearing confinement beyond seven days will assure that the Commissioner has the necessary facts before him that he needs to make the decision. It will also assure that if the issue must be litigated at some future date, the reviewing court will know the basis for the decision. See, e.g., Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 2979 (1974). Accordingly, Plaintiffs' request that Paragraph 1(f) of the courts remained unchanged and Paragraph 2 be modified as suggested herein.

Respectfully,



Stephen M. Latimer  
Director of Law Reform

SML/rb  
cc: Attorney General

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Attala County Circuit Court

We have granted defendants' motion  
to reargue in this action and have  
considered the briefs, the oral argument  
and the parties post-argument papers.

After due consideration, however,  
we decline to vacate or modify our  
prior judgment of June 24, 1975 and re-  
affirm our initial judgment.

SO ORDERED.

Charles E. Edwards  
U.S.D.J.

March 25, 1976